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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,686	03/08/2002	Giacomo Ezio Mazzer	2002-0335A	9278
513	7590	11/12/2003	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			BEFUMO, JENNA LEIGH	
2033 K STREET N. W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006-1021			1771	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

**Application No.**

10/070,686

**Applicant(s)**

MAZZER, GIACOMO EZIO

**Examiner**

Jenna-Leigh Befumo

**Art Unit**

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81. No new matter may be introduced in the required drawing.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. The phrase “within a tolerance limit of  $\pm 8$  yarns per centimetre” in claim 1 is indefinite. Is the Applicant stating that the number of yarns can actually range from 54 to 78 yarns/cm, instead of 62 to 70 yarns/cm? Claims 2 – 7 are rejected due to their dependency on claim 1.
5. The phrase “two layers of synthetic fabric” in claim 7 is indefinite. Is the Applicant referring to the synthetic fabric described in claim 1, i.e., both layers are made of that woven material? Or, can the layers be made from any synthetic fabric with any weave, knit, or nonwoven construction?
6. The term “sheath” is interpreted as any material which can be wrapped around or surround an object to protect said object.
7. The phrase “number of yarns ranging from 62 to 70 yarns per/cm” is interpreted as referring to the number of yarns in either the warp direction or weft direction.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nunez et al. (5,800,514).

Nunez et al. discloses a flat woven tubular fabric (abstract). The fabric is made from polyester yarns having a denier range of 20 to 1000, or 22 to 1111 dtex (column 10, lines 13, 14, and 28). The fabric produced can be any weave pattern, but preferably is a plain weave with 170 – 190 warp yarns per inch, or 67 to 75 yarns per cm (column 10, lines 35 – 36). Thus, claims 1, 2, 5, and 6 are anticipated by Nunez et al.

***Allowable Subject Matter***

10. Claims 3, 4, and 7 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach a woven fabric made from yarns with a linear density of 400 to 2000 decitex and having 62 to 70 yarns/cm in either the warp or weft direction which is finished with a continuous dyeing process. While Nunez et al. discloses that woven fabric structure as set forth above, it would not be obvious to one of ordinary skill in the art to dye the fabric taught by Nunez et al. since the fabric is designed to be implanted within a human body, and dyeing the

fabric would only add more chemicals to the fabric which could cause potential problems after implantation. Further, the prior art fails to teach producing a multi-layer fabric from the claimed weave structure, wherein the layers are dyed different colors to indicate the degree of wear of the outer layers of the fabric.

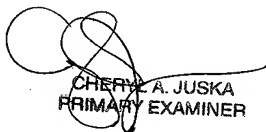
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. Approximately December 31<sup>st</sup>, the examiner's telephone number will change to (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
October 27, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER